



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1994

Ms. Joy Vaughn
Administrative Coordinator
Texas Board of Occupational Therapy Examiners
4900 North Lamar
Austin, Texas 78751-2399

OR94-466

Dear Ms. Vaughn:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 25395.

The Texas Board of Occupational Therapy Examiners (the "board") has received a request to review a complaint filed against the requestor. You assert that the complaint file is excepted from required public disclosure under section 552.101 of the act.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977):

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. article 6252-17a, section 3(a)(1)). In *Industrial Foundation*, the court found the following kinds of information to be intimate and embarrassing: information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

The complaint at issue was filed against the requestor by the current wife of her ex-husband. In addition to the complaint, the file contains a complaint that the requestor filed against her ex-husband with the American Psychiatric Association, correspondence, board notes documenting its investigatory activities, a memorandum from the board's legal counsel,¹ and numerous exhibits submitted by the complainant, including portions of the requestor's deposition testimony in divorce proceedings between her and her ex-husband and another action between the complainant and the requestor. You state that the complaint file is confidential under section 552.101 because it "involves privacy and property interests of third parties" and because the complaint is "beyond the statutory authority of this agency" given that it involves personal as opposed to professional matters.

Although we agree that some of the information in the complaint file is highly intimate and embarrassing and is of no legitimate public interest, we also note that the requestor, the subject of the complaint, has a special right of access to private information about herself. Section 552.023 of the act provides an individual with a limited special right of access to information about herself. This provision prevents a governmental body from asserting an individual's own privacy as a reason for withholding records from her. See Open Records Decision No. 481 (1987). Many of the records in the complaint file contain private information about the requestor. These documents may not be withheld from her. Emotional, sexual, psychiatric, and other medical information that relates solely to the complainant, which we have marked, is confidential under section 552.101 and may not be released.² The remaining information must be released.

¹You have not asserted that this memorandum is excepted from required public disclosure under section 552.107 of the act, and we assume that the board has waived any privilege that might have attached to this document.

²Some of the information we have marked is contained in documents that the requestor prepared or in transcripts of her deposition testimony. We note that the act does not give the requestor a special right of access to information on the basis that she has prepared it or has had prior access to it. Rather, the act gives her a special right of access only to private information about herself. Even though it may be obvious that a person has prior knowledge of private information about another person, section 552.101 of the act precludes a governmental body from releasing it, unless the subject of the information has expressly waived any privacy interest in it, or the information has become part of the public court record in either the related civil action or the divorce proceeding. Cf. *Star Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (court cannot prevent a newspaper from publishing a rape victim's identity when lawfully obtained from public record).

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Mary R. Crouter". The signature is fluid and cursive, with the first name "Mary" being the most prominent.

Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/LRD/rho

Ref.: ID# 25395

Enclosures: Marked documents

cc: Ms. Harmony Karina Standard
P.O. Box 642
Helotes, Texas 78023
(w/o enclosures)